

FILED: December 28, 2007

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 07-7377  
(1:02-cv-04213-JFM)

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In re: SALVATORE SPINNATO,

Petitioner

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JUDGMENT

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In accordance with the decision of this Court, the petition  
for writ of mandamus is denied

/s/Patricia S. Connor, Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 07-7377

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In Re: SALVATORE SPINNATO

Petitioner.

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On Petition for Writ of Mandamus (1:02-cv-04213-JFM)

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Submitted: December 20, 2007 Decided December 28, 2007

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Before MICHAEL and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Petition denied by unpublished per curiam opinion

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Salvatore Spinnato, Petitioner Pro Se

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Salvatore Spinnato petitions for a writ of mandamus alleging the district court has unduly delayed acting on his motion to reopen his habeas petition. He seeks an order from this court directing the district court to act. The district court has recently ruled on the motion to reopen. Spinnato v. Galley, No 1:02-cv-04213-JFM (D Md Nov 15, 2007). Accordingly, although we grant leave to proceed in forma pauperis, we deny the mandamus petition as moot. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED

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\*To the extent Spinnato seeks to challenge the district court's order, a mandamus petition may not serve as a substitute for an appeal. See In re United Steelworkers, 595 F.2d 958, 960 (4th Cir. 1979).

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NOTICE OF JUDGMENT

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Judgment was entered on this date in this case

PETITION FOR REHEARING (FRAP 40)  
PETITION FOR REHEARING EN BANC (FRAP 35)

**FILING TIME:** A petition must be received in the Clerk's Office within 14 days after judgment to be timely. There are three exceptions to this rule:

(1) In all civil cases in which the United States or an agency or officer thereof is a party, any petition for rehearing must be received in the Clerk's Office within 45 days after entry of judgment.

(2) The Court may grant an extension of time or leave to file a petition for rehearing out of time if the party establishes that the delay resulted from the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or other circumstances wholly beyond the control of counsel or a party proceeding without counsel.

(3) Prisoner petitions are deemed filed when delivered to prison authorities.

If a petition for rehearing en banc is to be filed, it must be filed at the same time and in the same document as the petition for rehearing and must be clearly identified in the title.

Each case number to which the petition applies must be listed on the petition, even in companion or consolidated cases, in order to identify the cases to which the petition applies and to avoid

companion cases proceeding to mandate during the pendency of a petition for rehearing in the lead case.

A timely filed petition for rehearing or petition for rehearing en banc will stay the mandate and toll the running of time for filing a petition for writ of certiorari.

**PURPOSE:** A petition should only be made to direct the Court's attention to one or more of the following situations:

1. A material fact or law overlooked in the decision.
2. A change in the law which occurred after the case was submitted and which was overlooked by the panel.
3. The opinion is in conflict with a decision of the United States Supreme Court, this Court, or another court of appeals, and the conflict is not addressed in the opinion.
4. The proceeding involves one or more questions of exceptional importance.

**STATEMENT OF COUNSEL:** A petition shall contain an introduction stating that, in counsel's judgment, one or more of the situations exist as described in the above "Purpose" section. The points to be raised shall be succinctly listed in the statement.

**FORM:** The 15 page limit allowed by the Rule shall be observed. File 4 copies of a petition for rehearing. If a petition for rehearing en banc is filed, 12 copies are required.

#### **BILL OF COSTS (FRAP 39)**

**FILING TIME:** A party to whom costs are allowed, who desires taxation of costs, shall file a bill of costs within 14 calendar days of entry of judgment.

#### **MANDATE (FRAP 41)**

**ISSUANCE TIME:** In original proceedings before this Court, there is no mandate. Unless the Court shortens or extends the time, in all other cases, the mandate issues 7 calendar days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay the issuance. If the petition or motion is denied, the mandate will issue 7 calendar

days later. If a stay of mandate is sought, 4 copies of the motion must be filed.

**STAY:** A motion for stay of the issuance of the mandate shall not be granted simply upon request. Ordinarily the motion will be denied unless it would not be frivolous or filed merely for delay and would present a substantial question or otherwise set forth good or probable cause for a stay.

**CRIMINAL CASES (Local Rule 46(d), CJA Plan)**

**CRIMINAL:** In criminal cases, counsel must inform the defendant in writing of the right to file a petition for writ of certiorari from an adverse decision of this Court. If the defendant requests that a petition be filed and counsel believes that a petition would be frivolous, counsel may file a motion to withdraw; otherwise, counsel shall prepare and file the petition for certiorari. Counsel appointed under the Criminal Justice Act must file their vouchers within 60 days of the later of entry of judgment, denial of a petition for rehearing, or the grant or denial of a petition for writ of certiorari.

**PETITION FOR WRIT OF CERTIORARI (Sup.Ct. R. 13)**

**FILING TIME:** Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. The petition must be filed in the United States Supreme Court within 90 days of this Court's entry of judgment. The time does not run from the issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from the denial of that petition.